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cf. 11901

IN THE HIGH COURT OF JUDICATURE AT BILASPUR
(CHHATTISGARH)

15
SECOND APPEAL NO. OF 2006

Single Bench

APPELLANT
DEFENDANT

✓ Dev Kumar Bani, S/o
Sahasram Bani, aged
About 45 years,
Occupation - Mistri
(Mechanic), R/o Raigarh
Road, Lailunga, District
Raigarh (Chhattisgarh)

VERSUS

RESPONDENTS
PLAINTIFFS

Shiv Mandir Lailunga
Through its Manager,
Nathhulal Singhania,
S/o
Late Chaturbhuj
Singhania, Aged 78
years, Occupation-
Business, Cultivator,
R/o Village Lailunga,
Tahsil Gharghoda, Dist.
Raigarh (Chhattisgarh)

Appeal valued at Rs 1184/-

Court fee affixed Rs 1190/-

SECOND APPEAL UNDER SECTION 100 OF CODE OF
CIVIL PROCEDURE

The appellant/defendant named above most humbly and

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Second Appeal No. 15 of 2006

Appellant/defendant : Dev Kumar Bani

Vs.

**Respondent/plaintiff : Shiv Mandir Lailunga through its
Manager, Nathhulal Singhania**

ORDER

POST FOR 8 /5/2006

**Sd/-
Dhirendra Mishra
Judge**

HIGH COURT OF CHHATTISGARH AT BILASPUR

SECOND APPEAL NO. 15 OF 2006

Appellant/defendant : Dev Kumar Bani

Vs.

**Respondent/plaintiff : Shiv Mandir Lailunga through its
Manager, Nathhulal Singhania.**

Present: Shri Ashish Shrivastava, learned counsel for the
appellant/defendant.
Shri B.P.Sharma, learned counsel for the respondent.

ORDER
(Passed on 8.05.2006)

Dhirendra Mishra

Heard on I.A.No. 1134/06, application for taking document on record.

2. Application is allowed and the document is taken on record.
3. Also heard on admission.
4. The appellant/defendant has preferred this second appeal under Section 100 of the Code of Civil Procedure against the judgment and decree dated 25.11.2005 passed by II Additional District Judge, Raigarh in Civil Appeal No. 26-A/2004 arising out of the judgment and decree dated 28.08.2004 passed by the Civil Judge, Class-I, Raigarh in Civil Suit No.118-A/2002 and by which allowing the appeal preferred by the respondent/plaintiff the learned lower appellate Court has decreed the suit of the plaintiff.
5. Case of the plaintiff is that Shiv Mandir with idol of Shivji is situated over Abadi land of village – Lailunga. The temple was erected by Chaturbhuj Singhania, ancestor of plaintiff Nathhulal Singhania who is manager of the temple, about 75 years back. As per family partition the responsibility of management and worshipping came into the share of plaintiff Nathhulal Singhania and since then he is managing the affairs of the temple as manager.

The expenses towards repairs and maintenance of the temple and the shops were managed from the income of the shops and his own income by the plaintiff from time to time and the shops were given on rent to various persons. Previously the suit shop was given on rent to one Tulsiram and in the year 1962 the same was given on rent to Gopal Singhanian. Thereafter in the year 1983 the suit shop was given on rent to the defendant and since then he is in possession of the same paying rent at the rate of Rs.250/- per month. The defendant did not pay monthly rent from 01.08.1993 despite several oral requests whereupon a registered legal notice dated 25.01.1994 was sent to the defendant and when the defendant did not pay rent even after notice, a suit for recovery of rent of Rs. 2,000/- towards the rent and ejectment was filed. During pendency of the suit *Patta* (lease) of the land over which the suit shop was situated was also allotted by the Government in the name of Manager of the plaintiff/temple.

6. The defendant in his written statement denied the averment of the plaint and stated that the plaintiff is not manager of the Shiv temple and he wants to grab the nearby land of the temple for the purpose of constructing commercial complex for himself as the vacant land is the Govt. land. It is further averred that on the vacant land of Shiv temple the plaintiff and father of the defendant have constructed shops after encroachment and running their business in the said shops and after the death of father of the defendant, the defendant himself is running his business from the suit shop and thus he is in possession of the of the suit shop for the last 30-40 years. The father of the defendant had borrowed money from the plaintiff for construction of the shop and against which he had paid Rs. 250/- for two years as per oral agreement. The defendant denied the tenancy of the plaintiff. It was also averred that since he is in possession of the suit shop for the last 30-40 years therefore, he is filing application for settlement and lease separately. It was also pleaded that the defendant has perfected his title on the strength of long possession of 30-40 years as per doctrine of adverse possession. Rest of the pleadings of the plaintiff that the temple was constricted by Chaturbhuj Singhanian, the temple came into his share as per family settlement and he is managing the affairs of

the temple as manager were denied and it was averred that plaintiff has fraudulently obtained lease of the Abadi land in his name.

7. On the basis of pleadings of the respective parties learned Civil Judge framed issues and after recording statements of the witnesses dismissed the suit of the plaintiff vide judgment dated 25.2.2000 by recording a finding that Nathhulal Singhania was not authorized to file civil suit on behalf of Shivji ki Murti as manager of Shiv Mandir, Lailunga.

8. The plaintiff preferred civil appeal 13-A/2000 against the above judgment and the same was allowed by the learned Additional District Judge vide judgment dated 12.4.2002 and the matter was remanded to the trial court with a direction to give his findings on all issues after affording opportunity of hearing to the parties. Thereafter, pleadings were amended, additional documents were filed and witnesses were examined by the parties and the suit was again dismissed by the trial court vide judgment dated 28.8.2004 by recording a finding inter alia that the plaintiff is not registered titleholder and manager of the temple; defendant is the tenant of Shiv Mandir Lailunga, however, it is not proved that he has not paid rent from 1.8.1993; the defendant has not perfected the title by adverse possession over the suit house and that Nathhulal Singhania is not authorized to file suit on behalf of Shivji idol.

9. However, the appeal preferred by the plaintiff was allowed by the impugned judgment setting aside the judgment of the trial court and decreeing the suit of the plaintiff.

10. As mentioned above the learned Civil Judge Class-I even while dismissing the suit of the plaintiff has recorded a finding that though the plaintiff has proved that he has discharged the duties of manager of the temple and maintained it, however, there is no evidence on record to show that the temple in question is his personal property and the same is situated in his land or some trust has been constituted for management of the temple and since the temple is situated over the Government land, therefore, benefit may not be given to plaintiff for his personal interest.

11. While dealing with issue No. 5 the learned trial Court recorded a finding that the Shivji idol and the shops are not the personal property of the plaintiff and it is situated in the public place and therefore it should be registered as public trust and the public at large may apply for its registration as public trust to the collector. On the basis of above analysis it has been held that the plaintiff was not authorized to file suit on behalf of Shivji idol. However, the trial Court has also held that the defendant is the tenant of Shivji temple and he has not perfected his title by adverse possession. Since the defendant has not preferred any appeal against the judgment and decree of the trial Court it is not in dispute that he was the tenant of Shiv temple.

12. The appeal preferred by the plaintiff has been allowed and it has been held by the lower appellate Court by the impugned judgment that shops No. 1 to 8 belong to Shiv temple and shop No. 5 was given by the plaintiff to the defendant on a monthly rent of Rs. 250/- who has not paid the rent of the shop from 1.8.1993 and since the plaintiff manages the affairs of the temple, he was authorized to file suit on behalf of the temple.

13. Learned counsel for the appellant submitted that the suit was filed with the pleading that Shiv Mandir and the shops are situated over the Abadi land and the same was being managed and maintained by the plaintiff out of the fund collected by way of rent from the shops. However, contrary to the pleading it is stated by the plaintiff in his deposition that the shops belonged to him though no document/revenue records or any evidence has been laid by the plaintiff in support of his contention. It is argued that since the temple was situated over the Abadi land, the State was a necessary party. The plaintiff has no locus to file the civil suit on behalf of the Shiv Mandir as he is neither Pujari nor Mahunt of the temple and he has also failed to prove that he was the manager of the temple. The learned trial Court has correctly recorded a finding that the plaintiff Nathhulal Singhania was not authorized to file civil suit on behalf of Shiv Mandir. It is further argued that the lower appellate Court has erroneously relied upon Articles 409(2), 413 and 415-B of the Hindu Law. The Kabuliyatnama of Ex.P/20 relied upon by the lower appellate Court is an unregistered document and not admissible in evidence whereas Article 413

relates to Devasthanam, Math, Shebait, Mahunt, Debutter Property and the controversy involved in the instant case relates to the property of the temple. Since the plaintiff Nathhulal Singhania is not a Shebait/Pujari/Archak/Mahunt, Article 413 of the Hindu Law is not applicable in the present case.

14. Learned counsel for the appellant submitted that the following substantial question of law arises for adjudication of this second appeal;

"Whether the appellate Court below was justified in reversing the judgment and decree of the trial Court and decreeing the suit in favour of the respondent/plaintiff when the respondent/plaintiff has completely failed to establish his locus as Manager of Shiv Mandir?"

15. Placing reliance on the judgment reported in AIR 1965 M.P. 167 (V 52 C 47) in the matter of Chamelibai Vallabhadas and others Vs. Ramchandrajee and others it is contended by counsel for the appellant that where a person comes forward to sue on behalf of a deity claiming himself to be Shebait, he can not be allowed to sue unless he is able to make out his claim so as to bind the deity by the result of the litigation.

16. Further relying on the judgment reported in AIR 1967 Allahabad 273 (V 54 C 83) in the matter of Thakur Govind Deoji Birajman and others Vs. Susalli and others it is contended that suit for recovery of possession of the property on behalf of idol can be filed by the Pujari only when such person is able to show his prima facie right to do so.

17. Shri B.P.Sharma, Advocate appears on behalf of the respondent on caveat and he is heard on stay application {M.C.P.No. 44/2006}.

18. Learned counsel for the respondent submits that both the Courts below have held that the suit shop in question is the property belonging to Shivji ki murty/Shiv Mandir. Deity is a juristic personality and deity can possess property.

19. Relying on the judgment of the Supreme Court reported in AIR 1967 S.C. 1044 (V 54 C 219) in the matter of Bishwanath and another Vs. Sri Thakur Radha Ballabhji and others it is argued that even worshipper can sue on behalf of idol for declaration of title and possession of property from a person in illegal possession and Section 92 of the C.P.C. is not a bar for maintainability of such suit. Even the trial Court has held that Nathhulal Singhanian was managing the property in his personal capacity and in view of the above judgment there is no illegality in the judgment of the appellate Court.

20. I have heard learned counsel for the respective parties.

21. In Chamelibai Vallabhadas case (supra) it has been held that a person cannot be allowed to sue on behalf of idol so as to prejudicially affect the interest of the idol and he has to make out his claim that he is Shebait. However, in the instant case both the Courts below have recorded a finding that Nathhulal Singhanian was managing the affairs of the temple as manager and the defendant was tenant of Shivji temple. The lower appellate Court has also recorded a finding that the defendant has not paid rent from 01.08.1993, therefore, in the aforesaid circumstances it cannot be said that the suit filed by the plaintiff as manager of the temple in any way prejudicially affects the interest of the idol.

22. In the matter of Thakur Govind Deoji Birajman (supra) also it has been held that interest of the idol or its property is the main consideration in deciding the competency of the person to file suit on behalf of an idol and a person can be permitted to file a suit in the name of the deity if he is able to show by proving that he is the Mahunt/Pujari or Manager of property of the temple and the interest of the idol or its property is to be safeguarded. Kabuliyatnama of Ex.P/20 executed on 08.01.1957 by the heirs of Chaturbhuj Singhanian reveals that the plaintiff was entrusted with the responsibility of looking after the shops of Shivji temple situated at Lailunga. The above document may be considered to gather the intention of the founder who established the endowment and such document is admissible as per Article 409(2) of the Hindu Law. According to Article 413 of the Hindu Law by Mulla where property is devoted absolutely to

religious purposes then a suit on behalf of the temple for protection of the property can be brought by Shebait, manager of the temple and the position of the Shebait is elaborated in Article 414 of the Hindu Law.

23. In the matter of Bishwanath and another (supra) the Supreme Court in paragraph – 7 of its judgment has held that Section 92 of the C.P.C. is attracted where the trust is created for public purposes of a charitable or a religious nature; there was a breach of trust or a direction of Court is necessary in the administration of such a trust; and the relief claimed is one or other of the reliefs enumerated therein. Where a suit is by an idol as a juristic person against a person who interfered unlawfully with the property of the idol was a suit for enforcement of its private right and was, therefore, not a suit to which S. 92 of the Code of Civil Procedure applied. In the instant case also the suit is filed by the idol for possession of its property from the person who is in illegal possession thereof and therefore, the instant suit is a suit by idol to enforce its private right and as such maintainable.

24. On the basis of aforesaid analysis, this Court is of the considered opinion that the lower appellate Court was justified in arriving at the conclusion that Nathhulal Singhanian being manager of Shivji ki Murti, Shiv Temple at Lailunga, was authorized to file civil suit for recovery of possession and arrears of rent against the defendant and there is no illegality in impugned judgment. No substantial question of law as proposed by the appellant is made out for adjudication of this appeal and the appeal being without substance deserves to be dismissed at the motion stage itself.

25. In the result, the appeal fails and is hereby dismissed.

26. In the light of above order M.C.P.No. 44/2006 stands dismissed.

Sd/-
Dhirendra Mishra
Judge